

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUB-COMMITTEE B (ARTICLE 12)

UNITED STATES: SUGGESTED REDRAFT OF ARTICLE 12

1. The Members recognize that international investments [, both public and private,] can be of great value in promoting economic development and consequent social progress. They recognize that such development [would] will be facilitated if Members [were to] afford reasonable opportunities for investment upon equitable terms to the nationals of other Members and security for existing and future investments. They recognize also that Members have the right to prevent or limit the making of investments within their territories, or to establish appropriate safeguards with respect to such investment, including measures adequate to ensure that it is not used as a basis for interference in their internal affairs or national policies.
2. Members shall promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development in cases where such co-operation appears to the Members concerned to be appropriate.
3. Members undertake, for the purpose of carrying out the principles and subject to the limitations expressed in this Article:
 - (a) to provide reasonable opportunities for private investment and adequate security for existing and future investments; and
 - (b) upon the request of any Member to enter into consultations or to participate in negotiations directed toward agreement with respect to international private investments.

Comment by the Delegation of the United States

The above redraft is submitted as a working paper for the sub-committee on Article 12, and the following comments are made:

1. The redraft attempts to reflect the views of the United States delegation with respect to the discussion which has already taken place on Article 12 in the sub-committee. It is not intended that the redraft shall prejudice any amendments which have as yet not been discussed in the sub-committee.
2. The redraft of paragraph 1 and the transposition of paragraph 3
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of the Geneva draft to paragraph 2 have been made in the interest of clarity. As thus drafted, paragraphs 1 and 2 express the general principles with respect to international investment and the necessary limitations and safeguards. Paragraph 3 thus deals with the undertakings of Members upon the basis of and subject to the principles and limitations expressed in paragraphs 1 and 2.

3. The redraft of paragraph 1 deletes the words "acceptable to them" but inserts the substance of the amendment proposed by New Zealand. It thus makes explicitly clear that Members may prevent or limit, in whatever manner seems appropriate to them, the making of investments within their territories.

4. Brackets have been placed around the words "both public and private" in the first sentence of paragraph 1, in view of the discussion in the sub-committee on the subject of public investment and the question whether the Article should not concern only private international investment.

5. Minor drafting changes have been indicated in the second sentence of paragraph 1 for the purpose of achieving greater clarity and a more direct statement.

6. The redraft of paragraph 3, with respect to the undertakings of Members, makes clear that:

(a) The Undertakings of Members are for the purpose of carrying out the principles expressed in paragraphs 1 and 2 and are expressly subject to the limitations contained in those paragraphs, including such limitations as the right to establish appropriate safeguards, to make sure that investment is not used as a basis for interference in internal affairs or national policies, and that Members have the right to prevent or limit the making of investments within their territories;

(b) The opportunities for future private investment are to be "reasonable" and the security to be afforded to existing and future investments is to be "adequate". This alteration makes a substantial change, along the lines suggested formally by Pakistan and supported in the sub-committee by other delegations, in the last sentence of paragraph 1 as contained in the Geneva text. It is also believed that this amendment, taken in conjunction with the redraft of the first sentence of the new proposed paragraph 3, will take into account the amendment proposed by Mexico in the first paragraph of the Geneva text and the statements made by Venezuela with respect to constitutional

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provisions. It is not believed that such a commitment will in any way contravene the existing constitutional provisions which have thus far been explained in the discussions of this Article;

(c) The obligation of Members under paragraph 3 (b) is only to enter into consultations or to participate in negotiations directed for agreement based upon the principles and limitations expressed elsewhere in the Article. This is designed to make clear, in accordance with the views expressed by India, that there is no obligation to reach a satisfactory conclusion in such consultations or negotiations;

(d) The obligation of Members in connection with paragraph 3 (b) is to participate in consultations or in negotiations and there is no obligation expressed or implied to arrive at agreements which would in any way contravene the Articles of Agreement of the International Monetary Fund or any other existing international agreement to which Members may be parties. In view of this change, and of the proposed deletion of paragraph 2 of the Geneva text, it is not believed that reference need be made in the revised text to the Articles of Agreement of the International Monetary Fund. In order to make clear beyond peradventure of doubt what would seem to be entirely clear from the revised text, namely, that no contravention of the Articles of Agreement of the International Monetary Fund would be contemplated in such agreements, it is suggested that a paragraph be included in the report of the sub-committee stating this fact.

7. Although the amendments proposed by Peru and in paragraph 3 of the Mexican amendment have not as yet been discussed in the sub-committee, it is believed that the substance of these amendments is adequately handled in the redraft, since the redraft makes explicitly clear that Members have the right to regulate the manner in which foreign investment may be made within their territories. In this connection, it is recognized that the first clause, with respect to the availability of investment of the Peruvian amendment is not handled in the redraft.
